

1 RICHARD A. MARSHACK, #107291
rmarshack@marshackhays.com
2 DAVID A. WOOD #272406
dwood@marshackhays.com
3 LAILA MASUD, #311731
lmasud@marshackhays.com
4 MARSHACK HAYS LLP
870 Roosevelt, Irvine, CA 92620
5 Tel: 949-333-7777 -/- Fax: 949-333-7778

6 GERALD SINGLETON, #208783
JOHN C. LEMON, #175847
7 SINGLETON LAW FIRM, APC
450 A Street, 5th Floor
8 San Diego, CA 92101
Tel. (619) 771-3473
9 Email: gerald@slffirm.com
john@slffirm.com

10 Attorneys for SLF Fire Victim Claimants
11

12 UNITED STATES BANKRUPTCY COURT

13 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

14 In re
15 PG&E CORPORATION,
16 and,
17 PACIFIC GAS & ELECTRIC COMPANY,
18 Debtors.

19 Affects:

- 20 ☐ PG&E Corporation
21 ☐ Pacific Gas & Electric Company
22 ☒ Both Debtors

23 * All papers shall be filed in Lead Case,
24 No. 19-30088 (DM).

Case No. 19-30088 (DM)

Chapter 11

(Lead Case Jointly Administered)

OPPOSITION TO DEBTORS' MOTION
PURSUANT TO 11 U.S.C. §§ 105(a) and
502(c) FOR THE ESTABLISHMENT OF
WILDFIRE CLAIMS ESTIMATION
PROCEDURES

[Docket No. 3091]

Hearing:

Date: August 14, 2019

Time: 9:30 a.m.

Ctrm: Courtroom 17, 16th Floor

Place: United States Bankruptcy Court
San Francisco, CA 94102

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1 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY COURT
2 JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED
3 PARTIES:

4 The Singleton Law Firm (“SLF”) and Marshack Hays LLP, together with several other firms,
5 represent approximately 5,200 victims of the fires started by PG&E Corporation (“PG&E”) and/or
6 Pacific Gas and Electric Company (“PGE Company,” collectively with PG&E the “Debtors”) in
7 2015 (“Butte Fire”), 2017 (the twenty fires collectively referred to as the “North Bay Fires”) and
8 2018 (“Camp Fire”).¹ The SLF Claimants submit this opposition (“Opposition”) to Debtors’ Motion
9 Pursuant to 11 U.S.C. §§ 105(a) and 502(c) For the Establishment of Wildfire Claims Estimation
10 Procedures (“Estimation Motion”), filed on July 18, 2019, as Docket No 3091.

11 **1. Summary of Argument**

12 On January 29, 2019, Debtors filed voluntary Chapter 11 petitions under Title 11 of the
13 United States Bankruptcy Code (“Petition Date”). Debtors’ stated reason for seeking bankruptcy
14 protection was that they were facing \$30 billion in damages from the 2015 Butte Fire, the 2017
15 North Bay Fires (18 fires in 10 Northern California counties), and the 2018 Camp Fire. Together,
16 these fires burned nearly 500,000 acres, killed over 100 people, destroyed almost 20,000 homes, and
17 left tens of thousands of people homeless.

18 The SLF Claimants consist of individuals from each of the three major fires: the 2015 Butte
19 Fire (coordinated in Superior Court of California, County of Sacramento under JCCP Number 4853),
20 the 2017 North Bay Fires (coordinated in the Superior Court of California, County of San Francisco
21 under JCCP Number 4955), and the 2018 Camp Fire (which had not been coordinated or
22 consolidated at the time of the Petition Date). The SLF Claimants sustained damages in each of the
23 eighteen major North Bay Fires. Accordingly, the SLF Claimants comprise a more complete
24 representative group of fire victims than any other group in this proceeding.

25
26
27 ¹ The claimants represented by SLF, Marshack Hays LLP, and other firms are jointly referred to as
the “SLF Claimants.”
28

1 This Court must decide how to square each wildfire victim's right to an individual
2 determination of damages (which due process requires) with the necessity of resolving 20,000 to
3 30,000 claims within a reasonable period of time given the upcoming legislative deadline of June 30,
4 2020. However, the estimation process proposed by Debtors in the Motion fails to account for the
5 due process rights of each wildfire victim. The SLF Claimants propose an alternative methodology,
6 which has been previously employed, to promptly resolve outstanding matters with the ultimate goal
7 of meeting the June 30, 2020, California Legislative Deadline in AB-1054.

8 **2. Procedural Background**

9 Debtors continue to operate their businesses and manage their properties as debtors in
10 possession pursuant to 11 U.S.C. §§ 1107(a) & 1108. Debtors' Chapter 11 Cases are being jointly
11 administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of
12 Bankruptcy Procedure ("FRBP"). On February 12, 2019, the United States Trustee ("U.S. Trustee")
13 appointed an Official Committee of Unsecured Creditors ("Creditors Committee"). A torts claimants
14 committee has also been formed ("TCC").

15 None of the SLF Claimants are members of the TCC.

16 On July 18, 2019, as Dk. No. 3091, Debtors filed the instant Motion seeking to establish
17 wildfire claims estimation procedures.

18 **3. Legal Argument**

19 **A. Claims estimation**

20 Pursuant to 11 U.S.C. § 502(c), a bankruptcy court can estimate contingent or unliquidated
21 claims to establish the amount (if any) distributable to those claim holders under the plan if
22 liquidation of the claims would "unduly delay the administration of the case" 28 U.S.C.
23 §157(b)(2)(B); 11 U.S.C. §502(c)(1). The essence of Section² 502(c) is that "all claims against the
24 debtor be converted into dollar amounts."³ If the goal of avoiding undue delay can be achieved
25

26 ² Unless otherwise indicated, all Chapter and Section references are to the Bankruptcy Code, 11
27 U.S.C. §§ 101–1532.

28 ³ House Report No. 95-595, 95th Cong., 1st Sess. 354 (1977); Senate Report No. 95-989, 95th

1 *through a limited mode or form of claim estimation, a bankruptcy court ought not to expand the*
2 *estimation's scope beyond this limited extent absent compelling reasons to do so. See In re North*
3 *American Health Care, Inc.*, 544 B.R. 684, 689 (Bankr. C.D. Cal. 2016)(“Because estimation is a
4 second-best method, the Court concludes that the scope of unliquidated claim estimation in this case
5 should be confined to the extent necessary to accomplish the overarching goal of avoiding undue
6 delay in this case’s administration and not expanded beyond that point.”) Stated otherwise, the
7 bankruptcy court is not required to estimate a claim for distribution purposes unless it determines
8 that liquidating the claim would unduly delay the case. *In re Apex Oil Co.*, 107 B.R. 189 (Bankr.
9 E.D. MI 1997). Where undue delay is shown, the court must estimate the subject claims only to the
10 extent necessary to accomplish the overarching goal of avoiding undue delay. *In re Frontier*
11 *Airlines, Inc.*, 137 B.R. 811, 814 (D. Co. 1992).

12 **B. Debtors’ Motion is masquerading its true intent, which is to cap**
13 **victims’ potential recovery while denying those same victims due**
14 **process.**

15 Section 502(c) states that estimation is “for purpose of allowance under this section.” 11
16 U.S.C. §502(c). As such, “an estimation under section 502(c) generally should result in an allowed
17 claim for all purposes in the bankruptcy case.” Collier on Bankruptcy ¶ 502.04[3] (16th ed. 2015).
18 But, even if a bankruptcy court’s estimation is not for such a limited purpose, its order allowing or
19 disallowing a claim against a bankruptcy estate has the same effect as any other order of a court of
20 competent jurisdiction. Accordingly, subject to due process limitations, principles of judicial finality
21 apply, including the principles of *res judicata* and collateral estoppel. See *Beatrice Co. v. Rusty*
22 *Jones, Inc.*, 153 B.R. 535, 536 (N.D. Ill. 1993)(holding that the district court “can reverse a
23 bankruptcy court’s decision on the method for ascertaining the value of claims only when it is so
24 fundamentally wrong that no reasonable person could agree with it”) (citing to *Libby v. Illinois High*
25 *School Ass’n*, 921 F.2d 96 (7th Cir. 1990)).

26
27 Cong., 2nd Sess. 65 (1978), U.S. Code Cong. & Admin. News 1978, pp. 5851, 6310
28

1 For purposes of determining plan feasibility and voting issues, Debtors assert that estimation
2 is a core proceeding that is “standard in mass tort bankruptcies.” Mot., pg. 3:6-10; pg. 3:13-19.
3 However, Debtors gloss over the fact that estimation “of contingent or unliquidated personal injury
4 tort or wrongful death claims against the estate *for purposes of distribution*” are, in fact, non-core
5 proceedings. See 28 U.S.C. § 157(b)(2)(B). Unless all parties consent, bankruptcy judges may not
6 finally determine non-core matters as those matters must be determined by the federal district court.
7 See 28 U.S.C. § 157(b)(c).

8 The Motion constitutes a thinly disguised attempt to execute a claims estimation process for
9 purposes of distribution rather than strictly for voting and plan feasibility purposes. The
10 contradictory nature of the Motion reveals Debtors’ actual intent. Initially, Debtors declare that they
11 are seeking claim estimation to “estimate voting and plan feasibility.” Mot., pg. 15:6-7. Yet,
12 immediately thereafter, Debtors true motives are revealed:

13 *[w]hether and to what extent the results of that estimating ultimately may be used*
14 *to determine the amount of consideration to be provided* to claimants or groups of
15 claimants as part of a Plan, consensual or otherwise, *is a question that can be*
determined, if it is presented at a later stage.

16 Mot., pg. 15:8-15 (emphasis added).

17 A careful reading of the proposed phases of estimation confirm that Debtor *is* seeking
18 estimation for purposes of distribution, which is outside this Court’s jurisdiction and far beyond the
19 simple goal of avoiding undue delay. Phase 3 of the proposed estimation process is particularly
20 concerning. See Mot., pg. 4:21-8:21. In Phase 3, Debtors propose to determine aggregate damages
21 for all claimants, based on a small sampling, and without individualized review:

22 Phase 3 would involve the resolution of questions around the likelihood of success of
23 the Wildfire Claims on other issues such as negligence, the recoverability of certain
24 categories of damages (such as the cost of rebuilding damaged structures, rather than
25 the accepted standard of diminution in value, see 6 Witkin, Summary 11th Torts §
26 1912 (2019) (“the basic and normal rule uses diminution in value as the measure; *i.e.*,
the difference between the market value of the land before and after the injury”)) *and*
the aggregate estimate of overall damages based upon sampling of claims and expert
testimony.

27 Mot., pg. 7:19-18:2 (emphasis added).

1 It appears Debtors propose to use the claim estimation process to create a limited fund for
2 payment of all present tort claims, thereby limiting the liability Debtors will have on those claims, all
3 without allowing the SLF Claimants and other tort claimants to conduct discovery. *Id.* Despite
4 Debtors' insistence that the proposed estimation process is for confirmation and voting purposes
5 only, the estimation process may also significantly affect distribution. *See In re Roman Catholic*
6 *Archbishop of Portland*, 339 B.R. 215 (Bankr. D. Or. 2006).

7 In *Roman Catholic*, the bankruptcy court ruled that, if the debtor wished to create a trust with
8 a cap on claims, due process likely requires ***individual estimation of claims***, rather than the
9 aggregate estimation process proposed by the Debtor in the Motion, which will divide the claims
10 into a few groups and use the same estimated amount for each claim in the given group. *Id.* The
11 Court explained, "[a] claimant's right to a remedy for tortious behavior could be substantially and
12 irreversibly affected by the estimation, where estimation is being used to establish a cap on the fund
13 that will be available to pay liquidated claims, and that fund could prove to be inadequate if the
14 estimate is too low. In that circumstance, due process likely requires an individualized estimation of
15 claims, as opposed to the aggregate estimation process debtor proposes." *Id.*, at 223.

16 Debtors' proposal to use estimation to effectively cap the amount of the fund available to pay
17 all tort claimants is similar to that proposed in *In re Dow Corning Corp.*, 211 B.R. 545 (Bankr. E.D.
18 Mich. 1997). In *Dow Corning*, the debtor allegedly sought estimation of the claims to establish the
19 feasibility of the plan and proposed to deposit into a trust a certain amount for payment of pending
20 personal injury claims. The court, however, determined that Dow Corning's strategy behind its
21 request for "estimation of the aggregate value of tort claims is to limit the amount it will ultimately
22 have to pay on account of tort liability." 211 B.R. at 566-67. The Michigan bankruptcy court
23 explained that Dow Corning "assumes that estimation will lead to a discharge of all liability and that
24 individual post-confirmation liquidation can only be had against a trust fund established as part of a
25 plan of reorganization ***regardless of whether such liquidation proves that the estimate was too***
26 ***low.***" *Id.* at 567. (emphasis added). The bankruptcy court acknowledged:

27 Allowing a bankruptcy judge to estimate the aggregate value of all claims for the
28 apparently benign reason of determining feasibility of a plan of reorganization, when

1 combined with the effects of 11 U.S.C. § 1141(d), can create the result that the
2 estimation was actually for purposes of distribution as well.

3 *Id.* at 569.

4 The bankruptcy court also pointed out that the claimants had a right to a jury trial, and stated
5 “if estimation for plan confirmation purposes results in de facto estimation for distribution purposes
6 via the effects of the plan of reorganization and the discharge provisions of § 1141(d), ***a claimant's***
7 ***right to a jury trial for purposes of liquidating her claim becomes hollow.***” *Id.* (emphasis added).
8 Such an outcome would seem to be inconsistent with at least the spirit of 28 U.S.C. § 1411(a),
9 providing as it does that “this chapter and title 11 do not affect any right to trial by jury that an
10 individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful
11 death claim.” 28 U.S.C. § 1411(a).

12 Here, Debtors are attempting to execute a similar plan as Dow Corning. Debtors seek
13 estimation in the aggregate amounts of the tort claims for the purported purpose of confirmation and
14 voting. But, they in fact, intend to use the estimation, along with the bankruptcy court’s
15 determination of liability on inverse condemnation and liability for the Tubbs Fire, to cap the amount
16 they will pay on all tort claims, while discharging any actual liability in excess of the estimated
17 amount. This Court does not have jurisdiction to estimate personal injury tort claims for purposes of
18 distribution, which is in effect what Debtors ask this Court to do.

19 The Motion, although masquerading as an estimation motion, seeks to effectively determine
20 the cap on the amount of money that will be made available to pay the tort claims of the countless
21 victims of the Wildfires. Mot., pg. 7:19-18:2. All without the ability for claimants to conduct
22 discovery. Indeed, in light of the provisions of the automatic stay pursuant to 11 U.S.C. § 362, the
23 SLF Claimants have been unable to engage in discovery since the Petition Date. Such lack of due
24 process is problematic, as through the Motion, the Debtors seek a determination from this Court
25 whether they are liable for the Tubbs Fire. Mot., pg. 6:5-13. All claimants must have the ability to
26 propound and examine discovery if this Court is to determine whether Debtors are liable for the
27 Tubbs fire. Failure to do so would be a deprivation of due process.

1 It is disingenuous to say the estimated aggregate amount does not constitute a cap on
2 eventual distributions by the Debtors to the tort claimants. Admittedly, the Motion is devoid of an
3 affirmative statement that Debtors will use this estimation process as a basis for capping the tort
4 claims under their eventual plan of reorganization. But, if their eventual Chapter 11 plan of
5 reorganization somehow makes it “uneconomic for jury trials to go forward (although stopping short
6 of outright elimination of the possibility of a jury trial through a Section 1141(d) discharge), the tort
7 claimants effectively would be deprived of their Seventh Amendment right to a jury trial, which
8 ...[is]... unfair, prejudicial and an outcome to be avoided. *In re N. Am. Health Care, Inc.*, 544 B.R.
9 684 (Bankr. C.D. Cal. 2016). Simply stated, claimants could suffer abrogation of their right to jury
10 trial. Without exception, estimation should not come at the cost of deprivation of due process.

11 To the extent the Court is inclined to grant the Motion, SLF Claimants request that any order
12 confirming a plan of reorganization contain a provision whereby the tort claims that have not
13 previously been resolved (through mediation or otherwise) are not discharged under Section
14 1141(d), but instead will be liquidated in amount through trials in state court or federal district court
15 (or settled in such courts).

16 **C. Alternative proposal to estimation**

17 Debtors settled nearly 2,000 individual cases (involving over 3,500 plaintiffs) from the 2015
18 Butte Fire (JCCP 4853). There is a great deal of institutional knowledge among both PG&E and
19 attorneys who are experienced in fire cases regarding the value of individual cases. While some of
20 these cases were settled through formal mediations, the vast majority were settled through informal
21 negotiations between individual plaintiffs' attorneys and outside counsel for PG&E (Quinn Emanuel
22 Urquhart & Sullivan).

23 The 2015 Butte Fire is one of the 3 major fire complexes (the other two being the 2017 North
24 Bay Fires, JCCP 4955, and the 2018 Camp Fire) in which the wildfire creditors suffered damages.
25 Like the other two fire complexes, the 2015 Butte Fire involved damages to real and personal
26 property, personal injuries, emotional distress, and wrongful deaths. Like the 2017 and 2018 fires,
27 the Plaintiffs in the 2015 Butte Fire asserted causes of action for inverse condemnation, negligence,
28

1 and trespass (among others) against PG&E. Accordingly, the settlements in the 2015 Butte Fire
2 cases strongly inform both the parties and the Court as to the appropriate amount of the damages in
3 the bankruptcy proceeding.

4 As has been the case with prior major fires (for example, the 2007 San Diego Fires), the
5 Butte Fire cases were settled on an individual basis. Each plaintiff presented a demand, received an
6 individual settlement offer, and then determined whether to accept the offer or proceed to trial.

7 Here, the complex issue of how to reasonably balance the right to individual determinations
8 of damages with the upcoming AB1054 deadline looming is one that will require further briefing,
9 negotiations between the parties, and, in all likelihood, an ultimate decision by the Court. But, as an
10 initial matter, the SLF Fire Victims' Claimants would like to offer the following example from the
11 Butte Fire cases as a starting point for discussion⁴:

- 12 • In July 2017, the Singleton Butte Fire Plaintiffs reached an agreement with PG&E for
13 a dispute resolution process that the parties termed "binding mediation." This process
14 was built on a similar "binding mediation" model process that PG&E and the
15 Singleton Firm developed for use in the 2007 San Diego Fires;
- 16 • While the precise terms of the process are subject to the mediation privilege, the
17 general terms of the process included; (1) PG&E did not contest liability; (2) victims
18 did not seek punitive damages; and (3) the parties agreed to a basic framework
19 regarding compensatory damages;
- 20 • Thereafter, the counsel for PG&E, Quinn Emanuel, and SLF negotiated *each case*
21 *individually* in an attempt to reach an informal resolution;
- 22 • If we were unsuccessful, we could attend a "binding mediation" in which both parties
23 would present their damages evidence to the mediator and attempt to resolve the case;
- 24 • Prior to attending the "binding mediation" the parties would agree on a range of
25

26 ⁴ See, Declaration of Gerald Singleton ¶¶6-15. The SLF Fire Victim Claimants readily acknowledge
27 that one size does not fit all, and different plaintiffs' groups may reach different agreements with
28 PG&E and/or put forth different proposals to the Court.

1 potential damages (“high-low agreement”);

- 2 • If mediation was unsuccessful, then the mediator would become an arbitrator and
3 decide on a final settlement amount within the high low agreement that would be
4 binding on the parties.

5 The above mentioned-process worked extremely well and the parties were able to settle
6 several hundred cases on an individual basis in a short period of time *without having to engage in a*
7 *single binding mediation*. This process could easily be adapted for use in this bankruptcy
8 proceeding. All it would require is for PG&E to; (1) hire a firm (like Quinn Emanuel) that has
9 institutional knowledge with respect to fire cases and (2) commit the necessary funds to permit
10 enough attorneys from the firm to work on the case to meet the necessary deadline.

11 While it certainly would require a great deal of work, if both parties proceeded in good faith,
12 the 20,000 to 30,000 individual claims could be resolved on an individual basis prior to the June 30,
13 2020 deadline imposed by AB1054.

14 SLF has personally resolved well over 1,000 fire cases, including over 700 from the Butte
15 Fire alone. If Debtors were to employ/dedicate 10-15 experienced fire attorneys to this case,
16 settlements could easily be reached at a 1,000 claims per week. Assuming 30,000 individual fire
17 claims, this would take roughly 30 weeks (i.e., 7-8 months) to resolve. If the proposed process began
18 in September, it would be done by April or May, and in advance of the June 30, 2020 deadline.

19 Granted, not all cases can be resolved this way, so binding mediations should take place
20 simultaneously for the small number of cases (likely somewhere between 5-10%) that do not resolve
21 informally. Similarly, there will be certain catastrophic cases (specifically, wrongful deaths and
22 serious personal injuries) for which the claimants will demand a trial. However, since these cases are
23 not numerous (the total number wrongful deaths from all fires is roughly 130, and that includes 25
24 from the Tubbs Fire, while the number of serious injury cases is commensurate), they could also be
25 completed prior to June 30, 2020.

26 While this just one suggestion, the idea is that it is possible for this Court to fashion a
27 solution for distributing funds which grants each individual fire victim his/her due process right to a
28

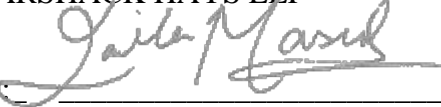
1 meaningful individual determination of his/her damages while completing the process by June 30,
2 2020. While the task ahead certainly is daunting, it is not impossible. The Court should not succumb
3 to Debtors' suggestion that, given the large number of claims, it must resolve these cases using a
4 matrix (or similar group estimation) that does not fully take into account the individual damages
5 suffered by each of Debtors' victims.

6 **4. Conclusion**

7 Rather than allow victims their day in the proper forum to determine liability and damages or
8 have the opportunity to fully present their individual damages in a streamlined process, Debtors
9 seeks to short cut due process and ram a proposal for all victims – *regardless of each individual's*
10 *rights*- down everyone's throats. For the reasons set forth above, SLF Fire Claimants respectfully
11 request that the Motion be denied.

12
13 Dated: August 7, 2019

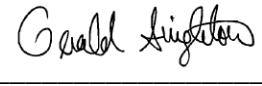
MARSHACK HAYS LLP

14
15 By:  _____

16 RICHARD A. MARSHACK
17 DAVID A. WOOD
18 LAILA MASUD
Attorneys for SINGLETON LAW FIRM
FIRE VICTIM CLAIMANTS

19 Dated: August 7, 2019

SINGLETON LAW FIRM, APC

20 By:  _____

21 GERALD SINGLETON
22 AMANDA W. LOCURTO
23 Attorneys for SINGLETON LAW FIRM
24 FIRE VICTIM CLAIMANTS
25
26
27
28

Declaration of Gerald Singleton

I, Gerald Singleton declare as follows:

1. I am an individual over 18 years of age and competent to make this Declaration.

2. If called upon to do so, I could and would competently testify as to the facts set forth in this Declaration.

3. The facts set forth below are true of my personal knowledge.

4. I am an attorney with the Singleton Law Firm ("SLF"). SLF and Marshack Hays LLP, together with several other firms, represent approximately 5,200 victims of the fires started by PG&E Corporation ("PG&E") and/or Pacific Gas and Electric Company ("PGE Company," collectively with PG&E the "Debtors") in 2015 ("Butte Fire"), 2017 (the twenty fires generally referred to as the "North Bay and Wind Complex Fires") and 2018 ("Camp Fire").⁵

5. I make this declaration in support of the SLF Fire Victim Claimants opposition ("Opposition") to PG&E Corporation ("PG&E Corp.") and Pacific Gas and Electric Company ("Utility"), as debtors and debtors in possession (collectively, "PG&E" or the "Debtors") Motion Pursuant to 11 U.S.C. §§ 105(a) and 502(c) For the Establishment of Wildfire Claims Estimation Procedures ("Estimation Motion"), filed on July 18, 2019, as Docket No 3091.

6. From the 2015 Butte Fire (JCCP 4853), Debtors have settled nearly 2,000 individual cases (involving over 3,500 plaintiffs). My firm and I have personally resolved well over 1,000 fire cases, including over 700 from the Butte Fire alone. Based on this experience, I believe there is a great deal of institutional knowledge among both PG&E and attorneys who are experienced in fire cases regarding the value of individual cases.

7. While some of these cases were settled through formal mediations, the vast majority were settled through informal negotiations between individual plaintiffs' attorneys and outside counsel for PG&E (Quinn Emanuel Urquhart & Sullivan).

///

⁵ The claimants represented by SLF, Marshack Hays LLP and other firms are jointly referred to as the "SLF Claimants."

1 8. The 2015 Butte Fire is one of the 3 major fire complexes (the other two being the
2 2017 North Bay Fires, JCCP 4955, and the 2018 Camp Fire) in which the wildfire creditors
3 suffered damages. Like the other two fire complexes, the 2015 Butte Fire involved damages to
4 real and personal property, personal injuries, emotional distress, and wrongful deaths. Like the
5 2017 and 2018 fires, the Plaintiffs in the 2015 Butte Fire asserted causes of action for inverse
6 condemnation, negligence, and trespass (among others) against PG&E. Accordingly, the
7 settlements in the 2015 Butte Fire cases strongly inform both the parties and the Court as to the
8 appropriate amount of the damages in the bankruptcy proceeding.

9 9. As has been the case with prior major fires (for example, the 2007 San Diego
10 Fires), the Butte Fire cases were settled on an individual basis. Each plaintiff presented a
11 demand, received an individual settlement offer, and then determined whether to accept the offer
12 or proceed to trial.

13 10. Here, the complex issue of how to reasonably balance the right to individual
14 determinations of damages with the upcoming AB1054 deadline looming overhead is one that
15 will require further briefing, negotiations between the parties, and, in all likelihood, an ultimate
16 decision by the Court. But, as an initial matter, I would like to offer the following example from
17 the Butte Fire cases as a starting point for discussion⁶:

- 18 • In July 2017, the Singleton Butte Fire Plaintiffs reached an agreement with PG&E for
19 a dispute resolution process that the parties termed “binding mediation.” This process
20 was built on a similar “binding mediation” model process that PG&E and the
21 Singleton Firm developed for use in the 2007 San Diego Fires;
- 22 • While the precise terms of the process are subject to the mediation privilege, the
23 general terms of the process included; (1) PG&E did not contest liability; (2) victims
24 did not seek punitive damages; and (3) the parties agreed to a basic framework

26
27 ⁶ In so doing, the SLF Fire Victim Claimants readily acknowledge that one size does not fit all, and
28 different plaintiffs' groups may reach different agreements with PG&E and/or put forth different
proposals to the Court.

1 regarding compensatory damages;

- 2 • Thereafter, the counsel for PG&E, Quinn Emanuel, and my firm negotiated *each case*
- 3 *individually* in an attempt to reach an informal resolution;
- 4 • If we were unsuccessful, we could attend a “binding mediation” in which both parties
- 5 would present their damages evidence to the mediator and attempt to resolve the case;
- 6 • Prior to attending the “binding mediation” the parties would agree on a range of
- 7 potential damages (“high-low agreement”);
- 8 • If mediation was unsuccessful, then the mediator would become an arbitrator and
- 9 decide on a final settlement amount within the high low agreement that would be
- 10 binding on the parties.

11 11. The above mentioned-process worked extremely well and the parties were able to
12 settle several hundred cases on an individual basis in a short period of time ***without having to***
13 ***engage in a single binding mediation.*** This process could easily be adapted for use in this
14 bankruptcy proceeding. All it would require is for PG&E to; (1) hire a firm (like Quinn
15 Emanuel) that has institutional knowledge with respect to fire cases and (2) commit the
16 necessary funds to permit enough attorneys from the firm to work on the case to meet the
17 necessary deadline.

18 12. While it certainly would require a great deal of work, if both parties proceeded in
19 good faith, the 20,000 to 30,000 individual claims could be resolved on an individual basis prior
20 to the June 30, 2020 deadline imposed by AB1054.

21 13. My firm has personally resolved well over 1,000 fire cases, including over 700
22 from the Butte Fire alone. If Debtors were to employ/dedicate 10-15 experienced fire attorneys
23 to this case, settlements could easily be reached at a 1,000 claims per week. Assuming 30,000
24 individual fire claims, this would take roughly 30 weeks (i.e., 7-8 months) to resolve. If the
25 proposed process began in September, it would be done by April or May, and in advance of the
26 June 30, 2020 deadline.

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14. Granted, not all cases can be resolved this way, so binding mediations should take place simultaneously for the small number of cases (likely somewhere between 5-10%) that do not resolve informally. Similarly, there will be certain catastrophic cases (specifically, wrongful deaths and serious personal injuries) for which the claimants will demand a trial. However, since these cases are not numerous (the total number wrongful deaths from all fires is roughly 130, and that includes 25 from the Tubbs Fire, while the number of serious injury cases is commensurate), they could also be completed prior to June 30, 2020.

15. While this just one suggestion, the idea is that it is possible for this Court to fashion a solution for distributing funds which grants each individual fire victim his/her due process right to a meaningful individual determination of his/her damages while completing the process by June 30, 2020. While the task ahead certainly is daunting, it is not impossible.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 7, 2019.

Gerald Lington

GERALD SINGLETON